

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

Filed: March 1, 2021

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KAVITA DESAI,

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UNPUBLISHED

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No. 14-811V

Petitioner,

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v.

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Special Master Gowen

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Decision Awarding Damages;

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Influenza (Flu); Shoulder Injury

SECRETARY OF HEALTH

\*

Related to Vaccine Administration

AND HUMAN SERVICES,

\*

(SIRVA).

\*

Respondent.

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*Richard Gage*, Richard Gage, P.C., Cheyenne, WY, for petitioner.

*Camille M. Collett*, Department of Justice, Washington, D.C., for respondent.

### **DECISION ON DAMAGES<sup>1</sup>**

On September 9, 2014, Kavita Desia (“petitioner”) filed a petition for compensation in the National Vaccine Injury Compensation Program.<sup>2</sup> Petitioner alleged that she suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of receiving an influenza (“flu”) vaccination on November 15, 2012. Petition at Preamble (ECF No. 1).

On July 30, 2020, I issued a ruling finding petitioner entitled to compensation. Entitlement Ruling (ECF No. 148). On December 21, 2020, I issued a Ruling on Damages,

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<sup>1</sup> Pursuant to the E-Government Act of 2002, *see* 44 U.S.C. § 3501 note (2012), because this opinion contains a reasoned explanation for the action in this case, I am required to post it on the website of the United States Court of Federal Claims. The court’s website is at <http://www.uscfc.uscourts.gov/aggregator/sources/7>. **This means the opinion will be available to anyone with access to the Internet.** Before the opinion is posted on the court’s website, each party has 14 days to file a motion requesting redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). An objecting party must provide the court with a proposed redacted version of the opinion. *Id.* **If neither party files a motion for redaction within 14 days, the opinion will be posted on the court’s website without any changes. *Id.***

<sup>2</sup> The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended 42 U.S.C. §§ 300aa-10 to 34 (2012) (hereinafter “Vaccine Act” or “the Act”). Hereinafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

awarding petitioner \$125,000.00 for past pain and suffering, future pain and suffering in the amount of \$1,000.00 per year for her remaining life expectancy of 25 years, and life care plan items. Ruling on Damages (ECF No. 159). That ruling is incorporated as if fully set forth. In the ruling on damages, I directed the parties to file a joint status report providing the present values of petitioner's future pain and suffering and future unreimbursed expenses. *Id.* at 16. On February 26, 2021, respondent filed a status report stating that his expert agrees with petitioner's expert, Dr. Mark S. McNulty that the value of petitioner's past pain and suffering and unreimbursed medical expenses is \$126,772.62 and the present value of petitioner's future pain and suffering and unreimbursed future medical expenses is \$101,641.46. Status Report (ECF No. 163). Respondent also stated that he "disagrees with the discounting methodology that [I] directed the economists to employ in this case" and "reserves the right to see further review."). *Id.*

**Therefore, petitioner is awarded a lump sum payment of \$228,414.08 in the form of a check payable to petitioner.** Specifically, I find that petitioner is entitled to \$125,000.00 for past pain and suffering, \$1,772.62 for past unreimbursed medical expenses, and \$101,641.46 for future pain and suffering and future unreimbursed medical expenses. This amount represents all damages that would be available under 42 U.S.C. § 300aa-15(a).

The Clerk of the Court **SHALL ENTER JUDGMENT** in accordance with this decision.<sup>3</sup>

**IT IS SO ORDERED.**

**s/Thomas L. Gowen**  
Thomas L. Gowen  
Special Master

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<sup>3</sup> Entry of judgment is expedited by each party's filing notice renouncing the right to seek review. Vaccine Rule 11(a).